



Personal Communications Network Services of New York

A LOCATE Company

February 25, 1994

The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20036

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

The Honorable James H. Quello
Commissioner
Federal Communications Commission
1919 M. Street, N.W.
Washington, D.C. 20036

The Honorable Andrew D. Barrett
Commissioner
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20036

Re: Ex Parte Comments on Award of PCS Developer's Bidding Credit for PCS
Auctions -- PP Docket No. 93-253

Dear Chairman Hundt and Commissioners Quello and Barrett:

Corporate Technology Partners, Personal Communications Network Services of New York (a LOCATE, Inc. subsidiary), and Tel/Logic Inc. (hereinafter: "the Petitioners") hereby jointly submit the following ex parte comments in response to the Commission's Notice of Proposed Rulemaking regarding Competitive Bidding (the "NPRM"). Each of the Petitioners is a PCS "innovator" by any definition of the term. Each Petitioner has done extensive work in developing PCS technology and services in their markets, has filed comments in all FCC proceedings related to PCS, and has been a leader in the experimentation that has advanced the PCS industry. Each Petitioner is also

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a founding member of a National PCS Consortium. This Consortium, was the first national consortium of potential PCS operators to be formed and has as its goal the creation of a national seamless interoperable network for PCS. The summed total in financial and other resources expended on PCS innovation by Petitioners individually and as part of the National PCS Consortium amounts to over \$10 million. The Petitioners urge the Commission to include in its final competitive bidding rules a "PCS developer's bidding credit" for bidders that have submitted to the FCC results from experiments and other work that have contributed to the development of PCS and demonstrated technical feasibility. The Petitioners recommend a bidding discount of 25% on one winning bid for a BTA license for PCS developers.

Award of a "developers bidding credit" is consistent with the Omnibus Budget Reconciliation Act of 1993, and the proposals of the FCC's Small Business Advisory Committee and the Chief Council for Advocacy of the U.S. Small Business Administration. The Budget Act requires the FCC to develop competitive bidding rules that promote the development and rapid deployment of new technologies, products and services. [47 U.S.C. para 309 (j) (3) (A)]. Early experimentation with PCS technologies and in network design has already played a key role in accelerating the deployment of PCS systems throughout the United States. In prescribing a competitive bidding process, the Commission is mandated by Congress to consider alternative payment schedules and

methods of calculation. [47 U.S.C. para 309 (j) (4) (A)]. These alternative payment schedules and methods of calculation could include bidding credits. Although bidding credits could detract from the revenues generated through the competitive bidding process, in adopting competitive bidding rules the Commission is not permitted to base a finding of public interest, convenience and necessity solely or predominantly on the expectation of Federal revenues from the use of a system of competitive bidding. [47 U.S.C. para 309 (j) (7) (B)]. A "developer's bidding credit" is entirely consistent with the statutory framework established by Congress in the Budget Act.

The "developer's bidding credit" further would implement the FCC's Small Business Advisory Committee's ("SBAC") recommendation that the FCC award a developer's credit. The SBAC's proposal was included in the Commission's Notice of Proposed Rulemaking on competitive bidding. Similarly, the Petitioners proposal for an "developer's bidding credit" is consistent with the position of the Chief Council for Advocacy of the United States Small Business Administration ("Office of Advocacy"). The Office of Advocacy has endorsed a preference for pioneers and "other types of innovators". The Petitioners believe it is essential to recognize and encourage early experimentation and development of systems for deploying new services and technologies in a competitive bidding licensing process. A "developers bidding credit" will promote

early and rapid deployment of new technologies and services, including PCS, consistent with the aims of the Budget Act.

A "developer's credit" is also in line with the Commission's stated goals for PCS - Speed of Deployment, Universality, Diversity of Service and Competitive Delivery. It is the PCS developer who is best positioned to deploy PCS quickly. It is the PCS developer, working with other PCS developers in national PCS consortiums, that can provide universality of service. Diversity of service will be the fruit of many different approaches to PCS technology and service that have been developed by PCS developers. PCS developers have done their experimentation in their home markets, have conducted surveys in and analyzed their home markets and have examined the local microwave interference factors. PCS developers have helped and will continue to help to "ensure that new and innovative technologies are made more readily available to the American people."

The Commission's goal should be to provide PCS developers with a reasonable assurance that they can win a license in their home markets. To provide a reasonable assurance that a PCS developer can win a license in its markets, two things must occur: The PCS developer must be able to raise sufficient money to bid, and in the bidding, the PCS developer must be given a sufficient bidding "edge" to forestall preemptive overbidding by others who may want a particular market for strategic reasons. It is the

Petitioner's belief that a 25% bidding discount for PCS developers is required to achieve both of these goals. A 25% discount translates to an ability to match the bid of someone bidding for strategic reasons up to 133% of the "normal" bid for a market. A lesser discount than 25% provides only limited protection as a third party may well be willing to overbid for a market of great strategic importance to the third party. Further, Petitioners have been told by a number of possible financial sources that a 25% discount will allow developers to raise the necessary money to bid for a market. Without a substantial discount (*i.e.* 25%), the reaction from the financial community has been: "Why back you in the auctions and go to all the trouble of due diligence and preparation of financial commitment documents when there is little assurance you will win in the markets you seek."

There is ample basis in the Omnibus Budget Act to justify the Commission's provision of a 25% bidding discount for PCS developers. This discount would also be in line with the Commission PCS goals of Speed of Deployment, Universality, or Diversity of Service and Competitive Delivery. The PCS developers should be determined through the adoption of a bright line test based upon the developers making the required filings under their experimental licenses, conducting local market analyses including verifiable market research to determine the market, feasibility and demand for various PCS services and having performed experiments with PCS technologies.

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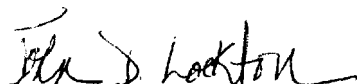
As developers of PCS services, the Petitioners look forward to the release of the FCC's final Competitive Bidding rules and encourage the FCC to include a developer's bidding credit.

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Respectfully submitted,

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